

PC Committee

From: Gina Flammer <Gina.Flammer@co.maui.hi.us>
Sent: Thursday, January 14, 2016 3:23 PM
To: PC Committee
Subject: PC-10 meeting materials for Jan 21 2016
Attachments: PC 10 _Planning Bill table.doc; PC_10_Planning Committee_ Planning Department Amendments.doc

Please see attached a bill table and the Department's amendments.

--Gina

Short-term Rental Home Summary of Amendments
Council Planning Committee PC-10
January 21, 2016

Code Section	Summary of change	Rationale
STRH Definition 19.12.020	Clarifies that accessory dwellings may be used for STRH use. Allows structures with a legal attached accessory unit to qualify. 5/28 – Committee ok'd	Housekeeping provision
STRHs in the Apartment District 19.12.020	Clarifies that B&B and strh use is a permitted use within the A-1 and A-2 districts, subject to the provisions of 19.64 for B&Bs and 19.65 for STRHs. 5/28 – Committee ok'd	A-1 & A-2 districts already allow any use permitted in the res & duplex districts. Provides clarification that single family dwelling units are allowed & are required to meet 19.65.
Agricultural District 19.30A	Committee to decide where to put STRHs in MCC Title 19: <u>Option 1:</u> Accessory use, if state law allows, then no permit <u>Option 2:</u> Special use and require a State Special Use Permit, if state law allows then SUP anyway <u>Option 3:</u> Special use subject to HRS 205 permitted uses, if state allows then a County Special Use Permit is required The current law uses Option 2. A copy of the SUP and CUP applications is included with the transmittal. 5/28: Dept rec Option 2 11/19: Dept rec Option 1 Committee ok'd Language provided to Council Srvs on 11/19	The State legislature has discussed allowing short-term rental use as an allowed use and currently allows it in under certain circumstances (when the county has an ag tourism ordinance and the farm meets the definition of a farm as in HRS 165). B&B use is considered an accessory use when certain criteria are met, i.e. \$35,000 of farm income, or an implemented farm plan, or if site is listed on State or National Historic Register. Dept recommending that the B&B criteria be used for STRHs whether accessory or special use.
Accessory dwellings	Clarifies that one single family dwelling and one accessory dwelling may be used for short-term rental. 5/28 Ok'd as part of earlier discussion on STRH Definition 19.12.020.	Codifies Dept policy
Properties subject to a CPR	Clarifies that lots subject to a condominium property regime are	Codifies Department policy and current application procedures.

19.65.030 (A) Restrictions and standards	<p>treated as a single lot and thus given one permit. The permit can have two dwellings and a maximum of six bedrooms for the lot.</p> <p>5/28 discussed- item deferred</p> <p>Chair's recommendation: "No more than one short-term rental home permit shall be approved for any lot. For properties subject to a condominium property regime, individual CPR units shall be considered individual lots." p. 43</p> <p>5/28 minutes</p> <p>11/19 item discussed. Dept rec that language stay the same. Corp Council to research and come back. Item deferred.</p>	
Caretaker provision 19.65.030 (D)	<p>The HAC and LPC voted separately to recommend that managers in their Community Plan Region not be required to hold a real estate license; however they must comply with state law. State law (HRS Section 467-2 (3)) allows an individual to act as a custodian or caretaker for a single owner, therefore a non-licensed individual will only be able to act as a manager for one (1) STRH property.</p> <p>5/28 Committee ok'd, however Council member Carroll may have comments at July mtg.</p> <p>Corp Council recommended that language read: <u>if required by state law</u> instead of <u>if allowed by state law</u></p> <p>Committee ok'd Nov. 19</p>	<p>Hana and Lanai lack sufficient licensed real estate agents. There are existing property managers that the HAC and LPC want to support. State law only allows for an individual to be a caretaker for a single owner.</p>
LLP as a form of ownership 19.65.030 (G) Restrictions and standards.	<p>Adds a limited liability partnership (LLP) as a qualifying ownership entity.</p> <p>5/28 – Committee ok'd</p>	<p>This is a common form of ownership. The other requirements including all partners must be natural persons and being related still applies.</p>
Minimum ownership requirement 19.65.030(D) 19.65.030 (G)	<p>19.65.030 D. The permit holder(s) shall:</p> <p>1. Hold <u>a minimum of a twenty-five fifty percent interest in the legal title to the lot on which the short-term rental home is located, except as provided in subsection G of this section; and</u></p>	<p>12/3 Committee added 50% interest which can be held by multiple applicants</p>

	<p>19.65.030 G. The short-term rental home permit shall be issued in the name of the applicant, who shall be a natural person or persons and [hold] <u>holding a minimum of a fifty percent interest legal title to the in the lot</u>; except that, a permit may be issued for a lot owned by a family trust, a corporation, <u>a limited liability partnership</u>, or an LLC if the following criteria are met:</p> <p>1. The applicant(s) shall be a natural person who is the trustee of the family trust, <u>a fifty or more partner(s) of an limited liability partnership</u>, [twenty-five] <u>fifty</u> percent or more corporate shareholder(s), or [twenty-five] <u>fifty</u> percent or more member(s) of an LLC;</p> <p>2. The corporation, <u>a limited liability partnership</u> or LLC shall not be publicly traded; and</p> <p>3. All of <u>the trustees, partners,</u> corporation's shareholders or all of the LLC's members shall be natural persons, and if there is more than one <u>partner</u>, shareholder or member, they shall be related by blood, adoption, marriage, or civil union. [Family trust members and beneficiaries shall be related by blood, adoption, marriage, or civil union.]</p> <p>5/28 Addition of LLP as ownership entity ok'd p. 56 minutes 12/3 Added 50% interest requirement for permit holders 12/3 removed family trust language per Corp Council</p>	<p>adds LLP (ok'd 5/28)</p> <p>12/3: Committee rec 50% interest can be multiple applicants' interest adding up to a total of 50% or more.</p> <p>12/3: Corp Council recommended to remove family trust language as it is duplicative.</p>
<p>6 bedrooms on Molokai, instead of 3 19.65.030 (K) Restrictions and standards.</p>	<p>On Molokai, allows up to 6 bedrooms to be used for the STRH operation instead of 1.</p> <p>5/28 Committee will defer to Council Member Stacy Crivello and</p>	<p>This is consistent with Maui island and Lanai. Varying regional/island requirements are costly to administer, as the permit system must accommodate every variation.</p>

	Molokai CP update. Ms. Crivello to provide follow-up on 2 Molokai related amendments after CP process: Number of bedrooms, length of permit	
Grouping all application criteria together Move: 19.65.060(A) (3) Permit processing to 19.65.030 (N) Restrictions and standards.	Moves application criteria from the Permit Processing section to the Restrictions and Standards section with the other criteria. 5/28 – Committee ok'd	All application criteria will be in the same place.
Notice sign requirement 19.65.050(C) Procedures for application and public notice.	Changes the sign requirement from being up at least five days prior to submitting the application to the same time period as the neighbor notification 5/28 – Committee ok'd	The Department currently receives calls about signs put up prior to the application being submitted. Signs staying up for long periods of time are not necessary and the Department has received complaints from neighbors and applicants about the length of time the sign is required to be up.
Newspaper Notice 19.65.050(D) Procedures for application and public notice.	Removes the requirement of the applicant placing a newspaper ad once a week for three weeks. 5/28 – Committee ok'd	Property owners with-in 500 feet receive notice when the applic is filed, if there is a public hearing, & after the permit is issued. A notification sign with information about the permit is also placed at edge of the property to provide further notice. The Department publishes a notice of public hearing items in the newspaper.
Hana applications 19.65.060(A)(2)(f) Permit processing.	Removes the trigger for the Maui Planning Commission for short-term rental homes located within the Hana community plan area when the number of bedrooms is four or more. 5/28 Committee ok'd, however Council Member Bob Carroll may provide comments at July mtg.	This is part of the Department's efforts make all areas consistent, to streamline the permit process and to encourage compliance. Currently only one permit has been applied for in Hana that meets this requirement.
Multiple ownership 19.65.060 Permit Processing	Adds a new planning commission trigger: when an owner or a trustee, partner, corporate shareholder or LLC's member of the subject property is also an owner or a trustee, partner, corporate shareholder or the LLC's member of an entity which holds	Allows the applicable commission to review applications when an individual holds an interest in a proposed STRH property and an existing STRH property.

	<p>title or an ownership interest in a permitted short-term rental home for another property.</p> <p>5/28 Committee ok'd</p>	
<p>Grouping all application criteria together 19.65.030 (N) Restrictions and standards. 19.65.060(A) (3) Permit processing.</p>	<p>Moves application criteria from the Permit Processing section to the Restrictions and Standards section with the other criteria.</p> <p>5/28 Committee ok'd</p>	<p>All application criteria will be in the same place.</p>
<p>Street Clarification 19.65.060 (A)(2)(a)</p>	<p>Adds the following language:</p> <p>The director receives two or more written protests from the owners or lessees of record of two or more lots adjacent to or directly across the street <u>from where access is made to the proposed short-term rental home. Roadway lots and road widening lots abutting the access street shall not be considered lots for the purposes of this section.</u></p> <p>11/19 Committee ok'd</p>	
<p>Permit Amendments 19.65.60 (J)</p>	<p>Clarifies that amendments to permits go through the same process as initial applications. 5/28 Committee ok'd Dept provided clarifying language on 7/2.</p> <p>Clarifying language: <u>Substantive amendments to a permit; including but not limited to an increase in the number of bedrooms or dwellings used or the addition of a new dwelling to the permit shall be processed in the same manner as the initial application.</u></p> <p>11/19 Committee ok'd</p>	<p>Codifies Department policy.</p>
<p>19.65.070(A) <u>Duration, renewals, non-renewals, and compliance and revocation</u></p>	<p>Adds Renewals to the section heading and takes out revocation. 5/28 Committee ok'd 7/2 Amendment adds Permit Duration and Non-renewals to the title.</p>	<p>Clarifies that the code also pertains to permit renewals. Revocation is added to the next section.</p>
<p>19.65.070(A)</p>	<p>Removes permit extension</p>	<p>Simplifies the renewal language.</p>

<u>Duration, renewals, non-renewals, and compliance and revocation</u>	language so that after one year permits are then renewed. 5/28 Committee ok'd 7/2 Dept amendment of Up to 3 year initial permit. Committee ok'd	It is confusing to have a permit time extension and a permit renewal as separate actions. Allows Department more flexibility in granting permits and streamlines the permit for the applicant & dept.
19.65.070(A) <u>Duration, renewals, non-renewals, and compliance and revocation</u>	Bill keeps Molokai renewals at 1-year. Dept recommending allowing subsequent permit renewals on Molokai for up to five years for new permits and for conditional permits renewed as an STRH permit. 5/28 Committee will defer to Council Member Stacy Crivello and Molokai CP update.	Council Member Crivello recommends waiting until after CP. Dept recommending all three Maui County islands be consistent. MoPC ok'd renewals up to 5 years.
19.65.070(B) <u>Duration, renewals, non-renewals, and compliance and revocation</u>	Dept originally proposed requiring renewals to be submitted at least 90 days prior to the expiration date. The Dept requested removal of this amendment at Nov. 5 th mtg. 11/19 Committee ok'd	Permit condition will read that renewal application shall be submitted within 90 days of the permit expiration date.
19.65.070(B) <u>Duration, renewals, non-renewals, and compliance and revocation</u>	Department rewrote non-renewal section. The following amendment is no longer needed: <u>If any notice of violation has not been overturned on appeal, or if the permit holder is not in compliance with the permit or other government requirements, then the director may deny a permit renewal application.</u> 11/19 Committee ok'd	Non-renewal procedures section was added to the bill Nov. 5 th . 19.65.0070F.
19.65.070(B) <u>Duration, renewals, non-renewals, and compliance and revocation</u>	Removes the requirement to submit verification of appropriate State and County tax filings each year. 5/28 Committee ok'd	The Department reviews and collects tax information at renewal time.
19.65.070 (B) <u>Duration, renewals, non-renewals, and compliance and revocation</u>	Removes the following language: No permit shall be renewed if the operation of the short-term rental home has created adverse impacts or has caused the loss of the character to the neighborhood in which it is situated. 5/28: Item deferred- Dept rewriting entire section 7/2 Dept rewrote this section, ok'd by Committee with comments	Language is unclear. Other language added that states that if there is an NOV or non compliance then the permit may not be renewed. Dept rewrote non-renewal and revocation criteria
19.65.070(C) <u>Duration, renewals,</u>	Compliance inspections may be conducted prior to granting a permit	Allows better enforcement of permit conditions.

<u>non-renewals</u> , and compliance and revocation	renewal or with cause during the permit period. Permit holders are required to allow access for compliance inspections with-in one hour of request. Refusal to allow access with-in one hour may result in permit revocation. 11/5: Committee ok'd	
19.65.070(D) <u>Permit duration, renewals, non-renewals</u> , and compliance and revocation	Removes the requirement for the applicant to send a copy of the entire permit approval letter upon permit approval. 5/28: Committee ok'd	The entire permit letter is long and often confusing to neighbors.
19.65.070(D) <u>Permit duration, renewals, non-renewals</u> , and compliance and revocation 19.65.070(E) <u>Duration, renewals, non-renewals</u> , and compliance and revocation	Removes the requirements for the applicant to send permit information to properties adjacent to adjacent properties. 5/28: Committee ok'd	The provision is confusing to applicants. In the cases of large acre parcels, the provision can require that neighbors outside the 500 foot circle receive the permit packet.
19.65.070 (F) (1)(d) <u>Duration, renewals, non-renewals</u> , and compliance and revocation	Adds noncompliance with permit conditions and other government regulations as a consideration when a permit is revoked. 5/28 Dept to rewrite 7/2 Committee ok'd with comments	Clarifies that these two criteria are considered during revocation investigations. Dept rewrote non-renewal and revocation criteria
19.65.070 (F) (2) <u>Duration, renewals, non-renewals</u> , and compliance and revocation	Removes inconclusive investigation procedure of referral to Planning Commission. 5/28: Committee ok'd	This was a recommendation by Corporation Counsel.
19.65.080(A) <u>Revocation and enforcement</u>	Dept rewrote revocation criteria and grouped in one place. Non-renewal and revocation criteria are the same. 5/28 Dept to rewrite 7/2 Committee ok'd with comments	Dept rewrote non-renewal and revocation criteria
19.65.080(A)(3)(E) <u>Revocation and enforcement</u>	Adds the word short-term rental home for clarity. 5/28: Committee ok'd	Provides clarity. Housekeeping item.
19.65.080(D)	The following enforcement language was deleted from the ordinance: <u>D.</u> Advertising for a short-term rental home without a valid permit	The language deleted is redundant with State law and Administrative rules. Sections inconsistent and not necessary.

	<p>number is prohibited and constitutes a violation of this title and may result in enforcement action pursuant to section 19.530.030 of this title; provided that:</p> <p>1. The alleged violator and the property owner shall be notified that all advertising without a valid permit number shall be terminated within seven days of the notice; and</p> <p>2. Enforcement action, including fines, may commence pursuant to section 19.530.030 of this title if advertising without a valid permit number continues after such warning.</p> <p>Per Corporation Counsel's request at Nov. 5 mtg</p>	
19.65.080(D)	<p>Operating without a valid permit is prohibited. Evidence of operation may include: <u>advertising</u>, guest testimony or <u>online reviews</u>, rental agreements, receipts, or any other information deemed relevant by the department.</p>	1. adds advertising and online reviews as evidence of operation.
Planning Department Amendments		
19.65.060 (A)(1) and 19.65.060(A)(2)(e)	<p>Planning Commission Triggers</p> <p>Committee to make policy call on number allowed with-in 500 feet before Planning Committee reviews.</p> <p><u>Withdrawn Dept amendment:</u> If there are five? or more permitted STRH operations with in 500 feet, then an application will not be accepted. Applications where there are less than five? with in 500 feet would be reviewed administratively.</p> <p>12/3 discussed amendment- no support for density cap. Dept withdrew density amendment. Discussion on PC triggers deferred</p>	

<p>19.65.080 D</p> <p>Dept note: This should be moved to the beginning of 19.65.080 as subsection "A" and re-letter the other sections accordingly.</p>	<p>5-Year Wait Period</p> <p>19.65.080 D. "Operating without a valid permit is prohibited. Evidence of operation may include: <u>advertising, guest testimony or online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Except on the islands of Lanai and Molokai until March 30, 2016, operating without a permit shall result in any property owners, or members of an LLC or LLP, or trustees of a trust, or corporate shareholders, being ineligible to apply for a permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for short-term rental home purposes for five years from the date of the most recent department notification of unlawful operation.</u></p> <p>12/3 some discussion. Item deferred. Dept to provide look back language.</p>	<ol style="list-style-type: none"> 1. Currently there are no Realtors on Lanai that want STRH business. Also provides relief to Lanai for 1 year while the two resorts are being remodeled and closed. 2. Committee appeared to have consensus on adding Molokai to this provision. 3. Clarifies when the 5-year period begins. 4. Property becomes ineligible for STRH permit for look back period.
<p>19.65.050</p> <p>Procedures for application and public notice</p> <p>Dept note: Add a new section "A" and re-letter other sections accordingly:</p>	<p>Look back Provision</p> <p><u>"A. Operating without a valid permit is prohibited. Except on the islands of Lanai and Molokai until December 31, 2016, in order to be eligible to apply for a short-term rental home permit, the subject property shall not have had any unpermitted short-term rental home, bed and breakfast home or any other type of transient vacation rental operations, and the property owners shall not have conducted any such unpermitted operations on any property, for at least two years prior to the date on which an application is submitted."</u></p> <p>Provided to Committee for 1/21</p>	<ol style="list-style-type: none"> 1. Provides for a two-year look back period 2. Look back activity includes any type of vacation rental.

Delete: 19.65.080	<p>delete this section: “The department shall notify listed operations of the need for a short-term rental home permit, and information on how to obtain one. Upon submitting an application, applicants with operations listed by the department shall submit evidence of general excise tax and transient accommodation tax payments for the prior year. If the applicant does not live on the property, the applicant shall also submit documentation showing that the applicant did not receive a home exemption pursuant to <u>section 3.48.450</u> of this code, and did not receive a circuit breaker credit pursuant to <u>section 3.48.780</u> of this code, for the short-term rental home during the previous tax year when the short-term operation was in place.”</p> <p>Provided to Committee for 1/21 mtg</p>	
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Planning Department Amendment
Council Planning Committee
PC-10 – Short-term Rental Homes
January 2016

1. Amendments Relating to 5 Year Wait Period

19.65.080 D. "Operating without a valid permit is prohibited. Evidence of operation may include: advertising, guest testimony or online reviews, rental agreements, receipts, or any other information deemed relevant by the department. Except on the islands of Lanai and Molokai until December 31, 2016, operating without a permit shall result in any property owners, or members of an LLC or LLP, or trustees of a trust, or corporate shareholders, being ineligible to apply for a permit for five years from the date of the most recent department notification of unlawful operation, and shall result in the property being ineligible to be used for short-term rental home purposes for five years from the date of the most recent department notification of unlawful operation.

This should be moved to the beginning of 19.65.080 as subsection "A" and re-letter the other sections accordingly.

2. Amendment Relating to "Look Back" Period

19.65.050 (Procedures for application and public notice). Add a new section "A" and re-letter other sections accordingly:

"A. Operating without a valid permit is prohibited. Except on the islands of Lanai and Molokai until December 31, 2016, in order to be eligible to apply for a short-term rental home permit, the subject property shall not have had any unpermitted short-term rental home, bed and breakfast home or any other type of transient vacation rental operations, and the property owners shall not have conducted any such unpermitted operations on any property, for at least two years prior to the date on which an application is submitted."

3. Delete "grace period" section that is no longer applicable

19.65.080: delete this section: "The department shall notify listed operations of the need for a short-term rental home permit, and information on how to obtain one. Upon submitting an application, applicants with operations listed by the department shall submit

evidence of general excise tax and transient accommodation tax payments for the prior year. If the applicant does not live on the property, the applicant shall also submit documentation showing that the applicant did not receive a home exemption pursuant to [section 3.48.450](#) of this code, and did not receive a circuit breaker credit pursuant to [section 3.48.780](#) of this code, for the short-term rental home during the previous tax year when the short-term operation was in place.”